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REVIEW OF THE PROCEDURE PROVIDED FOR UNDER ARTICLE 11 OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS

Report of the Secretary-General

CONTENTS

		Page
I.	INTRODUCTION	2
II.	REPLIES RECEIVED FROM STATES	2
	Argentina	2
	Belgium	3
	France	4
	Ireland	8
	Israel	10
	Norway (on behalf of the Nordic countries)	11
	Poland	12
	Spain	13
	Sri Lanka	13
	United Kingdom of Great Britain and Northern Ireland	14

* A/49/50/Rev.1.

I. INTRODUCTION

1. On 9 December 1993, the General Assembly adopted decision 48/415 entitled "Review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations", which reads as follows:

> "The General Assembly
>
> "(a) Requests the Secretary-General to carry out a review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations, taking into account the views expressed during the forty-eighth session of the General Assembly and any further views that States may submit, and to report thereon to the Assembly at its forty-ninth session, either as part of the report requested under resolution 47/226 of 8 April 1993 or separately;
>
> "(b) Decides to include in the provisional agenda of its forty-ninth session the item entitled 'Review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations'."

2. Pursuant to the above request, by a note dated 28 February 1994, the Secretary-General invited the Governments of Member States to submit the replies referred to above in decision 48/415.

3. The present report reproduces the replies that had been received as at 15 July 1994. Any further replies will be reproduced in addenda to the present report.

II. REPLIES RECEIVED FROM STATES

ARGENTINA

[Original: Spanish]

[12 May 1994]

1. The Government of Argentina considers that the procedure for the review of judgements established in article 11 should be abolished, with provision for an appropriate transitional period for decisions currently being processed according to that procedure. From a legal standpoint, it is undesirable to retain a system which makes the review of Administrative Tribunal judgements dependent on the decisions taken by the Committee on Application for Review of Administrative Tribunal Judgements, which is not a jurisdictional body. In any case, the International Court of Justice, established to settle disputes between States, does not seem to be the most appropriate body to hear work-related cases involving individuals. Furthermore, for four decades the system has failed to demonstrate in practice its efficiency as a mechanism for protecting the staff. Its use has brought no satisfaction to the applicants and has merely raised hopes, created delays and entailed expenditure of resources.

2. The question inevitably arises whether the abolition of article 11 should or should not be accompanied by the establishment of replacement mechanisms. In that regard, the Government of Argentina considers that the double-hearing principle is an essential component of any modern judicial system. It also considers that the simple abolition of the procedure for the review of judgements set forth in article 11, which has been used repeatedly by staff members despite its demonstrated practical uselessness, would probably be perceived as a step backwards as regards the protection system and would not help to enhance the credibility of the administration of justice by the United Nations.

3. The Government of Argentina nevertheless emphasizes the need to establish procedures that do not entail a substantial increase in financial and institutional resources. For example, it might be possible to explore the feasibility of having the Administrative Tribunal function as tribunal of both first and second instance, operating either successively in chambers and in plenary, or through a system of cross-review between chambers.

4. It would also be worthwhile to consider the possibility - technically preferable in the view of the Government of Argentina - of replacing the current joint appeals body mentioned in article 7 of the statute by a truly jurisdictional body which would function as a court of first instance. In that case, the Administrative Tribunal would become an appeals tribunal or court of second instance.

5. Lastly, the Government of Argentina wishes to refer to the creation of the post of ombudsman or mediator, which has been suggested by a number of delegations. The Government of Argentina has no objection in principle to such a post, which already exists in other bodies such as the World Bank and could help to reduce the number of disputes submitted to an adversary procedure.

6. The Government of Argentina nevertheless considers that by its very nature the ombudsman would simply be another administrative authority that would intervene before a case is referred to the Tribunal, in an effort to reconcile the parties, and possibly after the judgement is rendered, in order to facilitate its execution. It could, therefore, not be considered an appropriate substitute for a double-hearing judicial system or an adequate alternative to the abolition of article 11.

BELGIUM

[Original: French]

[10 May 1994]

1. In the opinion of the Belgian Government, the aforementioned article 11 should be abolished. The review procedure provided for under that article, which dates from the mid-1950s, never had any practical effect. The abolition should be total, since it is not desirable to maintain a limited application of the procedure (solely for Member States or for the Secretary-General).

2. The abolition of this article should not pose any problem. It can be effected by a technical resolution of the General Assembly amending the statute of the Tribunal and providing a transitional measure.

3. The review procedure provided for under article 11 should not be replaced by another appeals procedure.

4. The administrative protection of United Nations staff members could be improved by creating the office of ombudsman.

FRANCE

[Original: French]

[9 May 1994]

1. France, together with Australia, Benin and Ireland, requested the inclusion in the agenda for the forty-eighth session of the General Assembly of a new item calling for a re-examination of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations for the review of the judgements rendered by the Tribunal.

2. The sponsors are well acquainted with the experience so far in the Committee on Applications for Review of Administrative Tribunal Judgements, which has been for the most part negative, and have not embarked on this initiative lightly. Any attempt, however limited in scope, to amend the statute of the Administrative Tribunal warrants careful consideration since it would have a bearing on the protection of the rights of international civil servants, which States are under the obligation to guarantee. This protection is a condition for the recruitment of the high-calibre staff needed to carry out lofty missions of the United Nations, to which France has repeatedly affirmed its commitment.

3. The explanatory memorandum annexed to the request for inclusion of the item (A/48/232) sets forth the basic reason why the procedure established by article 11 of the statute of the Administrative Tribunal of the United Nations is considered unsatisfactory. Some further suggestions on how to approach this problem are given below.

1. A poorly conceived and ineffective review procedure

4. The procedure under review may be summarized as follows. After the Administrative Tribunal renders a judgement, a Member State, the Secretary-General or the person in respect of whom the judgement has been rendered by the Tribunal may object to the judgement before the Committee on Applications for Review of Administrative Tribunal Judgements composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. This committee, which is a political rather than a jurisdictional body, may decide to request an advisory opinion from the International Court of Justice. As stated in the explanatory memorandum which accompanies the request for inclusion of the item, of some 600

cases on which a judgement has been rendered by the Tribunal, the Committee on Applications has examined more than 80 requests and in 3 instances has considered it necessary that the International Court of Justice give its opinion. In all three cases, the Court has upheld the decision of the Administrative Tribunal.

5. The current procedure has given rise to numerous criticisms. While considering the three cases placed before them under article 11 of the statute of the Administrative Tribunal of the United Nations, the judges of the International Court of Justice often expressed a wish that the procedure be revised. In the most recent cases (Yakimetz (1987)), six judges gave an opinion and several expressed their sense of relative dissatisfaction with "any case in which a request has been made for an advisory opinion in the context of the article 11 review procedure".

6. The right to request an advisory opinion from the Court is, of course, available to all United Nations bodies. But the manner in which this right if structured under article 11 of the statute of the Administrative Tribunal of the United Nations results in the Court's being seized of questions of civil service law, which, while not without importance, are entirely unrelated to those issues with which the Court normally and properly deals. Moreover, the operation of the Committee on Applications has frequently appeared flawed since the political nature of its membership leads to votes explainable more by geographical solidarity than by legal logic, and the cumulative delays in cases examined by the Committee on Applications and by the Court itself, whose schedule is overburdened, lead to delays which make requesting advisory opinions less desirable and renders their application problematic. These criticisms have been frequently voiced, and in many cases by France.

7. One should not, however, attach too much weight to certain arguments. The fact that the Court has never rendered an opinion contrary to the judgement of the Administrative Tribunal is not in itself proof that the procedure is worthless. Three cases do not constitute an adequate basis on which to assess the effectiveness of a judicial procedure. And the right of referral to the Court could theoretically, by its very existence, motivate the Tribunal, if need be, to show respect for the law.

8. But the Tribunal's practice in adjudicating cases over nearly 30 years has shown that the rights of international civil servants will not be adversely affected by the abolition of a procedure that affords civil servants no right of appeal and which constitutes an anomaly in that it makes the fate of an application dependent on the will of a political body.

2. The institution of a right of appeal against the judgements of the Administrative Tribunal seems neither necessary nor desirable

9. There is a logic to the present statute of the Administrative Tribunal; it is based primarily on article 10, paragraph 2: "Subject to the provisions of articles 11 and 12, the judgements of the Tribunal shall be final and without appeal." This provision is clearly intended to reduce the number of cases that come before the Tribunal for adjudication and to prevent the procedures from dragging on. It also avoids weakening the authority of Administrative Tribunal

judgements. It is complemented by article 12, according to which, in the case of "some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal", the Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement.

10. The picture which emerges is one of a tribunal of first and last instance. In this context, article 11 can in no way be interpreted as a procedure of appeal. As the statute stands, there is no dual level of jurisdiction that might be compromised by a re-examination of article 11.

11. The limitative enumeration of the possible grounds for challenging judgements (questions of competence and jurisdiction, errors of law or procedure), contained in article 11, paragraph 1, makes the arrangement in question resemble a cassation procedure. The discretionary power which the Committee on Applications has to refuse to refer a matter to the Court differentiates this procedure even more clearly from an appeal. Consequently, there is no fundamental guarantee of the rights of international civil servants at stake in article 11. The question therefore is simply whether an advisory mechanism which thus far has not rendered any great service justifies the lawyers' fees, the often-disappointed hopes, the costs of various kinds and the delays that are sometimes detrimental to the proper administration of justice that it entails.

12. There is another ambiguity which must be avoided.

13. The Administrative Tribunal is not a subordinate court like the administrative courts in countries with common-law systems. According to its own statute, it is a court with full jurisdiction which guarantees the right to a fair trial without providing a mechanism for judicial review. And this is not an anomaly. In countries with civil-law systems where a dual-court system exists, as in France, the judicial courts never have to deal with the judgements of the administrative courts, to which applicants may have direct recourse. The Administrative Tribunal of the United Nations is more akin to this model, and in our view it would be entirely wrong to make the procedure established in article 11 into a mechanism for judicial review of the Tribunal's decisions.

14. As currently articulate, then, this procedure is neither a second stage of jurisdiction nor a form of judicial review and from any standpoint lacks the requisite character for the proper operation of justice.

3. Improvements in the preliminary proceedings and adjudication could effectively replace article 11, if the decision was taken to eliminate it

15. The question was raised as to what alternative mechanism might replace the one provided for in article 11.

16. A blanket right of appeal in all cases before the Court or other body clearly seems unworkable, for the reasons cited above. Providing no alternative for that procedure might, however, be feasible, since the existing procedure affords virtually no protection at all to civil servants, given the tenor of the judgements rendered by the Tribunal. Its only current purpose seems to be to provide lawyers with income. This is particularly true since, in cases in which

a judgement later appears to have been based on facts that were not fully known or inaccurately analysed, article 12 of the Tribunal's statute gives applicants the option of applying to the Tribunal for a revision of the judgement on the grounds that the decision was vitiated by a misapprehension of the facts of the case. This is a fundamental guarantee, which excludes only the possibility of a legal error on the part of the Tribunal - in other words, a misinterpretation of the Staff Regulations. The unwavering manner in which the Tribunal has construed this text in formulating its decisions and the wisdom and fairness with which it has applied it, taking into account both the rights of staff members and the exigencies of service, virtually rules out the possibility of such errors. It is appropriate for the Administrative Tribunal of the United Nations to implement the rule of law governing the relations between the Organization and its staff, and we cannot imagine a body better qualified to issue such authoritative interpretations and thus to legitimately review its own judgements.

17. The establishment of a mediator or ombudsman has been suggested in various forums. This suggestion has certain merits, but it goes without saying that the ombudsman could intervene only prior to the examination of a case by the Tribunal, since an administrative body obviously cannot supervise the work of a judicial one. In addition, the mediator could probably play a useful role in recommending modalities for the enforcement of judgements. During the pre-adjudication phase, he might also act as a conciliator. However, article 7, paragraph 1, of the statute of the Tribunal already provides for joint appeals bodies to which, as a general rule, a dispute must first be submitted in order for the application to be considered receivable by the Tribunal. The two instances (the mediator and the joint appeals body) would necessarily overlap and could prove unwieldy.

18. Another problem that ought to be raised is whether recourse to the mediator would be compulsory or optional. I will simply state that, according to article 7, paragraph 1, cited above, consideration of the appeal by the joint body is not obligatory "where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal." Regular use of this option might in fact be one of the causes of the current difficulties. In any case, this point deserves careful consideration.

19. Another approach, which would strengthen the guarantees available to staff members under the statute, also deserves consideration. This involves the role of the joint appeals bodies, which have competence for disciplinary matters and the hearing of various kinds of appeals from staff. These bodies could benefit from a general review of the way they fit into the framework of administrative procedures and of the guarantees they afford to staff members, so that the bodies might in themselves come to constitute an effective adjudication phase capable of stemming the proliferation of disputes. Without, naturally, assuming a jurisdictional role, such mechanisms for early administrative appeal should allow the applicant a real opportunity to seek redress. Cases heard by the Tribunal would thus have been given balanced consideration even before being brought before its judges.

20. In view of the civil service management issues that the Tribunal must hear, a strengthening of the adversary procedure in the phase preceding the judgement

would be more favourable to staff members and more useful for the Administration (in jurisprudential terms) than would a post-judgement recourse procedure, which would be more distant in time from the facts, and thus more abstract, and would in fact be highly unlikely to yield results.

21. Yet if we should fail to convince a sufficient number of others of the futility of providing a mechanism for appealing an initial judgement by the Tribunal, France would not in theory be wholly opposed to considering the establishment of procedures that would, in certain very serious and clearly delineated cases (dismissals and terminations, for example), allow the Tribunal, otherwise constituted, to reconsider the same case. This review, limited to specific sets of circumstances, would supplement the ordinary review procedure. The Tribunal could also be empowered to determine whether, in view of the gravity of the claim, the second appeal should be heard, without having to conduct examination proceedings.

22. These preliminary observations are intended to draw attention to the poor operation of this procedure, which seems to suffer from a flaw in design. France urges the prompt investigation of all approaches without exception that reflect the need to protect the rights of international civil servants as well as the need to deal expeditiously with disputes and to respect budgetary constraints. Article 11 of the statute of the Tribunal in its present form will meet none of these objectives.

IRELAND

[Original: English]

[16 May 1994]

1. Ireland joined with Australia, Benin and France in requesting inclusion of the item cited as an item in the agenda of the forty-eighth session of the General Assembly. Having intervened in the consideration of the item in the Sixth Committee, to which it had been referred, Ireland joined again with Australia, Benin and France in proposing the decision which was in due course adopted (decision 48/415).

2. Ireland, as a Member State whose representatives served on the General Committee of the forty-sixth and forty-seventh sessions of the General Assembly, was a member of the Committee on Applications for Review of Administrative Tribunal Judgements for two terms under the provisions of article 11.4 of the statute of the Tribunal. The experience of its representatives on the Tribunal, a close examination of the provisions of article 11 of the statute which established the procedure and a review of the practical application of the procedure since its establishment influenced the Government in taking these successive steps.

3. In the view of the Government of Ireland the procedure under article 11 has three main and fundamental deficiencies. First, the grounds on which an application may be granted are very narrow in scope and legally extremely technical. Secondly, there is no requirement to ensure that the Committee is

equipped with legal expertise, although the exercise of the quasi-judicial function of assessing whether grounds for a successful application had been established calls for such expertise. Thirdly, the relief available under the procedure, a request for an advisory opinion of the International Court of Justice, is inappropriate to a dispute on an administrative matter.

4. During the two terms of recent membership of Ireland of the Committee, none of the many applications received was allowed. The Government is satisfied that the vast majority, if not all, of the decisions taken by the Committee were justified, but it would not be surprised if a disappointed applicant had misgivings about the decision on his/her application in view of the limitations of legal expertise on the part of the Committee adjudicating on the matter.

5. An examination of the results of the procedure over the almost 40 years during which it has been available reveals a similar pattern. Only very few applications have been allowed, and in none of these cases has the advisory opinion requested of the International Court of Justice affected the judgement of the Administrative Tribunal. The conclusion that the Tribunal does not normally err in the manner covered in the grounds for an application, and that it is therefore virtually impossible to upset a judgement of the Tribunal through this procedure, seems inescapable.

6. In these circumstances the Government believes that the procedure does not serve a useful purpose. On the contrary, it tends to mislead litigants who have been unsuccessful before the Tribunal to believing that there is a realistic prospect of upsetting the Tribunal's judgement, and to expending valuable time and resources in fruitless pursuance of that goal. Correspondingly the United Nations Secretariat is required to spend valuable time and resources in responding to applications. The fact that neither the Secretary-General nor a Member State has resorted to the procedure in recent years may be due, at least in part, to recognition of its futility and the waste involved.

7. The Government is of the opinion that the fundamental deficiencies in the procedure, already identified, are at the root of its futility. It does not think that these deficiencies could be effectively remedied within the structure of the existing procedure. Accordingly, the Government believes there is a very strong case for abandonment of the procedure.

8. The Government appreciates that the establishment of the Committee obviously responded to a perception that a review procedure was required. Moreover it does not deduce, merely from the virtual impossibility of establishing any of the grounds for allowing an application, that the justice of the Administrative Tribunal's judgements in all cases is necessarily confirmed. Accordingly, it would be sympathetic to suggestions that other measures should be taken to ensure not only that justice is done but that it is also seen to be done. It is not, however, convinced that this can only be done, e.g., by setting up an appeals procedure involving review of the Administrative Tribunal's judgements by a higher judicial body. Such a procedure would be more elaborate and expensive than would be justified by the problem, or necessary to resolve it.

9. The Government believes that any new measure should tend to be more of an administrative than judicial nature. In this context it finds the idea of the establishment of an office of ombudsman interesting. Its perception of this office is that the incumbent would be of adequate status and independent of both the Administration and the staff; that his/her role would be principally one of mediating on differences and disputes at the behest of staff complaints; and that she/he would have the resources and facilities necessary to fulfil that role effectively. Anticipated benefits would include settlement of many differences before escalation into disputes, significant reduction in the number of cases referred to the Administrative Tribunal and greater clarity on the issues in cases actually referred to the Tribunal. In circumstances in which many differences were satisfactorily settled at an early stage and the issues in disputes not so settled were more clearly presented to and examined by the Tribunal, the Government would hope that the parties would agree with its view that it would be satisfactory to have the Tribunal operate as a court of final instance.

10. As a further assurance the Government would also be prepared to consider a strengthening of the provision in article 12 of the statute for application to the Tribunal for a revision of a judgement. The grounds for such a review could be broader than that set out in article 12 but should not be excessively technical. The provision could also involve exclusion of those members of the Tribunal sitting at the original hearing from participating in the examination of the application of review.

ISRAEL

[Original: English]

[16 June 1994]

1. The Government of Israel wishes to support the various statements made at the Sixth Committee relating to the above-mentioned issue during the discussion of agenda item 161 on 23 November 1993. Accordingly, it appears that the work of the Committee on Applications for Review of Administrative Tribunal Judgements was unproductive and that, therefore, article 11 on the review procedure should be abolished. There seems to be no disagreement that, on the whole, the judgements of the Tribunal are just and entitled to finality.

2. Under the review procedure set out in article 11 of the statute of the Administrative Tribunal, a Member States, the Secretary-General or a staff member who objects to a judgement of the Tribunal may apply to the Committee on Applications asking the Committee to request an advisory opinion of the International Court of Justice. Since its establishment in 1955, no member of the Secretariat and no Member State has successfully invoked the procedure. Only 3 out of more than 80 applications to the Committee have led to requests for advisory opinions. In each of these three cases, the International Court of Justice declined to interfere with the judgements of the Administrative Tribunal. On the other hand, the procedure gives rise to additional costs and delays. In addition, the current procedure involves a political committee

composed of States, that is, the most recent General Committee, taking in effect quasi-judicial decisions.

3. For all these reasons, the Government of Israel believes that the proper solution should be to abolish the procedure under article 11 of the statute of the Administrative Tribunal.

NORWAY

(on behalf of the Nordic countries)

[Original: English]

[13 April 1994]

1. The Nordic countries understand the dissatisfaction among various States Members of the United Nations with respect to the procedure set forth in article 11 of the statute of the Administrative Tribunal, a dissatisfaction which is based upon an unnecessarily complex process. This has become a matter which, in the view of the Nordic countries, must be dealt with through pragmatic revision.

2. Conceptions which have been propounded thus far by, among others, Australia, Benin, France and Ireland in the debate under this agenda item during the forty-eighth session of the General Assembly fortify the stance that the process needs careful revision. It is necessary to formulate a procedure that ensures the rights of complainants, without thereby creating unnecessarily complex procedures. A process with many review stages or steps does not in itself create a more equitable process. As there is no need for overly complex procedures to ensure an equitable remedial process, burdensome procedures which do not provide any obvious additional protection should be terminated. A modern United Nations must provide both fair and pragmatic procedures in such matters.

(a) The Nordic countries favour relieving the International Court of Justice of the potential burden of deciding administrative matters. Such matters ought not be assigned the level of significance which the International Court of Justice customarily deals with, that being primarily matters between States.

(b) The advisory procedure of the statute of the International Court of Justice does not provide for an appropriate contradictory procedure necessary for an appeals tribunal, which is the International Court of Justice's present role in this process.

(c) An ombudsman's office or review board could represent a review of the first instance, dealing with potential conflicts at a preliminary stage. A valuable screening process that would obviate, for further complainants and the United Nations, the need of review before the Tribunal would thus be available. Such an office would screen cases prior to their submission to the Tribunal. Moreover, it would have the more prominent duty of mediating conflicts up to a certain point. An ombudsman's office would have a preventive role providing an

early solution mechanism, with the dual role of both reviewer and mediator. The office would review whether there is a substantial basis for an application and, if so, mediate between the parties. If a solution could not be reached through mediation, the application might then be referred to the Administrative Tribunal. An ombudsman's office would have more direct contact with complainants and provide a less burdensome resort of the first instance. Such a legal office must be unquestionably independent with no possible outside influence.

(d) The General Assembly's Committee on Applications has proved to be a quasi-legal though highly political step in the process. Consequently, its role may have proved to be more burdensome than valuable to complainants. One should therefore consider dissolving it, with all functions transferred either to the ombudsman's office or the Tribunal.

(e) The Administrative Tribunal's function might be transformed and extended. This can be realized by its becoming the final arbiter of administrative cases, without any further review instance, as is provided in article 10, paragraph 2, of its statute. If further review is deemed necessary, it might be provided by the Administrative Tribunal en banc.

3. It is foreseeable that a more expeditious procedure as found in the above two-step approach will consequently improve relations of employees vis-à-vis the United Nations, through simplifying the means of conflict resolution while also minimizing delay and decreasing expenses for all parties. Due to a more flexible preliminary mechanism, it appears unlikely that a grievance accretion would occur.

POLAND

[Original: English]

[20 May 1994]

In response to the Secretary-General's note dated 28 February 1994 and taking into account General Assembly decision 48/415 as well as the discussion which took place in the course of the debate on the agenda item "Review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations" in the Sixth Committee during the forty-eighth session of the General Assembly, the Government of the Republic of Poland is of the view that:

(a) There is an urgent necessity to delete article 11 of the statute of Administrative Tribunal of the United Nations and therefore eliminate the special procedure established in 1955. This procedure is inadequate, unpractical and political in its nature. The Committee on Applications for Review of Administrative Tribunal Judgements ("the Committee on Applications") is explicitly not a judicial (appeal) body, particularly in the light of its composition;

(b) Judgements of the Administrative Tribunal should be final. An internal system of appeal, if need be, might be considered;

(c) The jurisdiction of the Administrative Tribunal, which is limited in its scope, does not in any way justify the necessary involvement of the International Court of Justice;

(d) Abolition of the Committee on Applications would also reduce the expenses of the Organization;

(e) The idea of the establishment of the Office of Ombudsman in the United Nations Secretariat (for its staff) seems to be useful, most suitable and promising and should be further elaborated.

SPAIN

[Original: Spanish]

[9 May 1994]

1. The Government of Spain considers that the procedure provided for under article 11 of the statute of the United Nations Administrative Tribunal has at present a number of disadvantages, especially its limited practical use, and the inappropriateness of involving the International Court of Justice, which already has sufficient work to do, in such matters. Therefore, Spain favours the abolition of this procedure.

2. The Government of Spain therefore supports the replacement of the procedure provided for under article 11 of the statute by another, more appropriate system to protect United Nations staff in their employment relations with the Organization. This new procedure should not involve revision of the Administrative Tribunal's decisions, so as not to create the same problems we are trying to avoid.

SRI LANKA

[Original: English]

[19 May 1994]

1. The statute of the United Nations Administrative Tribunal provides, in article 11, for an appeal procedure from a judgement rendered by the Tribunal. This remedy provided by way of appeal is distinct from the right of revision provided by article 12 on the more circumscribed ground of the discovery of some fact of such nature as to be a decisive factor which was unknown to the Tribunal and the party claiming revision at the time the judgement was given.

2. The function assigned to the Committee established by article 11 of the statute is to determine whether there is "a substantial basis" for an application for appeal made in terms of article 11 of the statute. Given the

limited nature of the function assigned to the Committee and the past experience, i.e., the limited number of applications to the Committee, as well as the failure to successfully invoke the procedure, there are strong grounds for its termination.

3. Most statutes have a general provision relating to the power of tribunals to review judgements only on very limited grounds, such as the discovery of new facts, as in article 12. This is for the reason that the power to review judgements is a derogation from res judicata and the finality of judgements. For instance, the statute of the Administrative Tribunal of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (World Bank Administrative Tribunal) specifically provides, in article XI, that judgements shall be final and without appeal. The only remedy provided is for the limited right to revise a judgement in the event of the discovery of a new fact which, by its nature, might have had a decisive influence on the judgements of the Tribunal and which at the time of the judgement was unknown both to the Tribunal and to the party. Thus, the proposal to terminate the procedure under article 11 of the United Nations Administrative Tribunal is consistent with the tendency reflected in other statutes towards finality of judgements.

4. At the same time, there must be an alternative mechanism provided to address, in a practical manner, day-to-day problems which arise in relation to contracts of employment of staff members of the United Nations. Sri Lanka could agree, in principle, to the proposal for creating an office of ombudsman to address these issues and which could also act as a "filter" to reduce the number of cases submitted to the Tribunal.

5. The creation of such a mechanism would be vital, as recourse to the advisory jurisdiction of the International Court of Justice by the General Assembly in terms of Article 96 of the Charter of the United Nations may not be a suitable remedy in addressing day-to-day issues affecting the United Nations staff.

6. Sri Lanka would agree with the view that retaining a partial recourse to the Committee, only by Member States to the exclusion of staff members, would not be appropriate.

7. A General Assembly resolution can be the procedural device for amending the statute of the United Nations Administrative Tribunal to terminate the article 11 procedure.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]

[2 May 1994]

1. The United Kingdom submits the following views in response to the invitation in the note from the Secretary-General. These are in addition to the

views expressed in the statement of the United Kingdom in the Sixth Committee on 23 November 1993 (A/C.6/48/SR.36, paras. 14-18).

2. For the reasons given in that statement, the United Kingdom considers that the procedure under article 11 should be terminated. The procedure was instituted in the mid-1950s in response to a particularly difficult situation within the United Nations Secretariat in circumstances quite different from those of today. It has never helped any staff member or Member State, and serves no useful purpose. Any possible advantage in retaining the procedure is far outweighed by the disadvantages (false expectations; delays, costs; inappropriateness of the procedure, both as regards the Committee on Applications for Review of Administrative Tribunal Judgements and the International Court of Justice).

3. The possibility has been raised of retaining the article 11 procedure, but only for Member States that wish to challenge judgements of the Tribunal and not for staff members (or the Secretary-General). The United Kingdom does not consider this necessary. Other remedies are available to Member States, acting through the General Assembly itself, if they wish to question or reverse a Tribunal judgement. They may propose that the General Assembly, under Article 96, paragraph 1, of the Charter of the United Nations, request the International Court of Justice to give an advisory opinion; or the General Assembly may amend the Staff Rules and Regulations.

4. In technical terms, termination of the article 11 procedure would be straightforward. It would require a General Assembly resolution amending the Tribunal's statute as provided for in article 13 thereof, with an appropriate transitional provision. One possibility would be that the article 11 procedure should apply in respect of Administrative Tribunal judgements delivered up to 31 December 1994 but not to those delivered after that date. A draft General Assembly resolution is presented after paragraph 6 below. The United Kingdom considers that such a resolution should be adopted by the General Assembly in 1994.

5. The question has been raised whether some new provision should be made if the article 11 procedure is terminated. The United Kingdom does not consider this necessary. The United Kingdom would not favour the introduction of a system of appeals from Administrative Tribunal judgements. There is already provision for the revision of judgements, under article 12 of the statute, which would not be affected by termination of the article 11 procedure. There has to be an end to litigation somewhere, and in the view of the United Kingdom this should be at the level of the Tribunal.

6. The United Kingdom would be ready to consider other proposals for new measures of protection for staff members, for example a staff ombudsman such as exists in some other international organizations, but these would not be a substitute for the article 11 procedure and their consideration should not, in the view of the United Kingdom, delay termination of the article 11 procedure.

Draft resolution

"The General Assembly

"1. Decides to amend the statute of the United Nations Administrative Tribunal with respect to judgements rendered by the Tribunal after [31 December 1994], as follows:

"(a) Delete article 11;

"(b) Renumber the former articles 12, 13 and 14 as articles 11, 12 and 13 respectively, and in paragraph 3 of article 9 substitute the words 'article 13' for 'article 14';

"(c) Amend paragraph 2 of article 10 to read:

'Subject to the provisions of article 11, the judgements of the Tribunal shall be final and without appeal';

"2. Decides that, with respect to judgements rendered by the Tribunal before [1 January 1995], the statute of the Tribunal shall continue to apply as if the amendments in paragraph 1 above had not been made."